

To the Department for Execution of Judgments of the  
European Court of Human Rights,  
Committee of Ministers of the Council of Europe  
Email: [DGI-Execution@coe.int](mailto:DGI-Execution@coe.int)

Chişinău, 26 July 2023

## COMMUNICATION

in accordance with Rule 9.2

**LEVINȚA v. MOLDOVA group of cases**

### INTRODUCTION

This submission is presented by the Legal Resources Centre from Moldova (LRCM)<sup>1</sup> in the context of consideration of execution by the Republic of Moldova of the *Levința* group of cases at the 1475<sup>th</sup> CDDH meeting (19-21 September 2023).

The *Levința* group concerns various violations of the ECHR, mostly related to ill-treatment and torture in police custody; ineffective investigations; conviction based on evidence obtained under torture, etc. The key recommendations and requests made to the Moldovan authorities at the previous CDDH meeting (14-16 September 2021) may be resumed as it follows:

- to provide information on the criminal cases initiated in the last years, the reasons for a low number of cases referred to the courts and the high rate of acquittals, and whether the authorities are conducting a preliminary inquiry before initiating a proper investigation.
- to provide information on existing practices as regards suspension from office of those under investigation for ill-treatment.
- to provide information on the measures adopted to ensure that security considerations do not limit detainees' access to medical assistance.
- to provide updated information on measures to ensure in-practice confidentiality during medical examinations while in police custody.

On 23 June 2023, the Moldovan Government submitted their [Updated Action Report](#). It provided information regarding the individual measures planned to address the situation of the applicants. In respect of general measures, it mentions some statistical data regarding ill-treatment, and information on relevant training provided for legal professionals.

The LRCM submission is exclusively focused on guarantees against ill-treatment, on the efficiency of the criminal investigation of ill-treatment, and on the lack of effective medical assistance in detention facilities. It relies on the official data provided by the General Prosecutor's Office (GPO), by the Moldovan Ombudsman, and by LRCM's extensive study on how ill-treatment cases have been sanctioned in the Republic of Moldova in the last decade<sup>2</sup>.

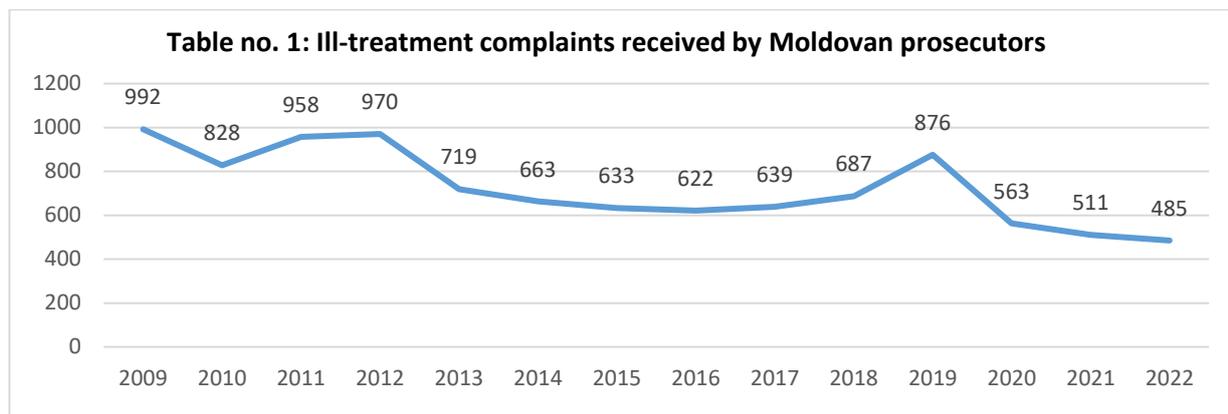
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<sup>1</sup> [Legal Resources Centre from Moldova](#) (LRCM) is a non-profit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. We are independent and politically non-affiliated. We published two comprehensive reports on the execution of ECtHR judgments by the Republic of Moldova, [for the period 1997-2012](#) and [2013-2014](#). In 2021, we made [one more submission](#) on *Levința* group of cases.

<sup>2</sup> LRCM, Study, Trial and punishment of torture and ill-treatment – case law analysis, December 2022, available at: [https://crim.org/wp-content/uploads/2023/01/Judecarea-si-sanctionarea-torturii\\_ENG.pdf](https://crim.org/wp-content/uploads/2023/01/Judecarea-si-sanctionarea-torturii_ENG.pdf)

## ILL-TREATMENT IN MOLDOVA

The table below presents the official data on the number of complaints received by the prosecutors.



In 2021, the Prosecutor's Office received 511 ill-treatment complaints and 485 complaints in 2022. This is the lowest number of complaints received in the last 13 years. There is no official explanation for this sudden drop in the number of complaints. Nevertheless, this should be treated with caution if corroborated with the low rate of opened investigations into these complaints. Moreover, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during its 2020 visit, expressed its' concern about this significant number of cases of alleged ill-treatment. **Considering that somewhere between 500 – 600 complaints are made annually for a country of less than 3 million inhabitants – this is a rather high number.**

GPO reports for 2019-2022 do not provide information on the subjects against whom those complaints are directed. In 2017-2018 – the complaints were mostly directed against police officers. It seems that the same trend is valid for the last years, i.e., the ill-treatment usually takes place at the police premises. The LRCM study also established that 75% of the ill-treatment cases examined by the Supreme Court of Justice (SCJ)s refer to charges against police officers. Therefore, in the most of cases the only witnesses to these actions are the co-workers (teammates) of the suspect(s), who, out of corporate solidarity, deny the existence of ill-treatment, which considerably affects the prompt examination of the case. According to Moldovan Ombudsman, the **people who come into first contact with police employees without having any procedural status, remain extremely vulnerable to the acts of ill-treatment to which they may be subjected.** For example, in 2022, an outrageous case occurred in Sorooca, where several policemen cruelly mistreated two civilians in the moment of apprehension, during transportation, in front of the inspectorate and in the police' office<sup>3</sup>. The victims had no procedural or misdemeanour status. On the other hand, the prosecutors established the phenomenon of the practice of [not reporting ill-treatment events in prisons](#), a fact that supports latent criminality.

## INVESTIGATION OF ILL-TREATMENT

Despite the large number of ill-treatment complaints, prosecutors rarely decided to initiate criminal prosecution based on them. In 2021 prosecutors-initiated investigations only on 1 out of 11 complaints of ill-treatment received, and only 4% of complaints received led to court trials. The situation was similar

<sup>3</sup> Ombudsman Special Report on Case of alleged application of Torture in Sorooca inspectorate, 2022, available at: [http://ombudsman.md/wp-content/uploads/2022/05/Raport\\_Special\\_Cazul-Gutu\\_Covalciuc-c-IP-Sorooca\\_FINAL.pdf](http://ombudsman.md/wp-content/uploads/2022/05/Raport_Special_Cazul-Gutu_Covalciuc-c-IP-Sorooca_FINAL.pdf)

in 2022. The low rate of opened criminal investigations was criticized [in 2017 by the UN Committee Against torture](#) (see para. 12) and confirmed by Ombudsman in [its 2022 Annual report](#) (see page. 68)

**Table no. 2: Statistics concerning ill-treatment complaints and investigations.**

| Year | Number of complaints | Initiated criminal investigations | % of complaints in which the investigation was initiated | Submitted to the court | % of cases sent to trial court of the received complaints in the previous year |
|------|----------------------|-----------------------------------|--|------------------------|--|
| 2009 | 992                  | 159                               | 16%  | 36                     | 3.6%   |
| 2010 | 828                  | 126                               | 15%  | 65                     | 6.6%   |
| 2011 | 958                  | 108                               | 11%  | 36                     | 4.4%   |
| 2012 | 970                  | 140                               | 14%  | 46                     | 4.8%   |
| 2013 | 719                  | 157                               | 22%  | 49                     | 5.1%   |
| 2014 | 663                  | 118                               | 18%  | 46                     | 6.4%   |
| 2015 | 633                  | 113                               | 18%  | 38                     | 5.8%   |
| 2016 | 622                  | 107                               | 17%  | 31                     | 4.9%   |
| 2017 | 639                  | 103                               | 16%  | 34                     | 5.5%   |
| 2018 | 687                  | 93                                | 14%  | 26                     | 4.1%   |
| 2019 | 876                  | 86                                | 10%  | 34                     | 5%   |
| 2020 | 563                  | 47                                | 8%   | 22                     | 2.6%   |
| 2021 | 511                  | 46                                | 9%   | 21                     | 4.1%   |
| 2022 | 485                  | 69                                | 14%  | 15                     | 3.1%   |

**In 2021, prosecutors submitted to trial court 21 (4%), and in 2022 – 15 cases (3%) cases concerning torture and ill-treatment. According to statistical data from the table, on this head, no substantive progress has been recorded in the last decade.** On the contrary, if in 2012, 4.8% of all ill-treatment complaints ended up in courts, in 2022 only 3.1% of such complaints led to a trial. On average, the rate of ordinary criminal cases sent for trial varies between 20 and 30%, i.e., is at least 2 times higher than in ill-treatment cases.

A low rate of initiated ill-treatment investigations and of cases sent to court confirm the prosecutors’ reluctance to act proactively in combating torture. **The number of ill-treatment complaints decreased meanwhile, but it was most likely determined by the harshening of the sanctions for ill-treatment, not by the proactive attitude of prosecutors. In fact, we have not noticed a qualitative change in the attitude of prosecutors.**

**Thoroughness and promptness of investigations**

Without opening an investigation, it is impossible to gather all the evidence needed to complete it (ex. an expert conclusion, which is mandatory in the ill-treatment case, could be requested only after opening a criminal investigation). In 2019-2022 the rate of opened criminal investigations remained the same as in 2009-2010 or was even lower. This explains why almost 90% of ill-treatment complaints do not reach the trial. **This figure, corroborated with the low rate of cases ending in court, confirms once again the reluctance of the prosecutors to bring ill-treatment charges and to investigate efficiently these cases.**

We admit that the ill-treatment cases are hard to investigate, but, bearing in mind the absolute nature of prohibition of ill-treatment, the need to firmly combat torture and the impact of the length of proceedings on the victims, the ill-treatment cases should be treated with priority. According to GPO, **opened ill-treatment investigations last at the average from 1 year to 2 years.** In exceptional situations this period might be justified, but not in most cases. [Based on LRCM research](#) of 71 irrevocable

judgements of the SCJ, issued between July 2013 and February 2022, we found that, in some cases, criminal investigation lasted for more than five years. Consequently, for the ill-treatment produced until December 2012, the statute of limitations for the application of the sanction (which is calculated until the judgement of the court of appeal is pronounced) expired. **The prosecutors should speed up the investigation of ill-treatment cases to ensure an adequate preventive effect of prohibition of torture.**

### **Sanctions for ill-treatment**

We believe that the sanctions for ill-treatment provided by the Moldovan Criminal Code are sufficient to ensure the deterrent effect. The application of these provisions in practice is, however, much more important. **The Moldovan authorities do not have full statistics about the sanctions applied in ill-treatment cases. This is itself problematic.** Only statistical data are published by the GPO, but these data only refer to the sanctions applied by the judges of the first instance court. This information is not accurate, as most first-instance court judgments are appealed and often overturned in appeal or cassation. Bearing in mind that no other statistics are available, we will rely on only the official statistics available.

**Table no. 3: Statistics concerning the verdicts of the first instance court in ill-treatment cases.**

| Year | Delivered judgements | TOTAL (persons accused) | Convictions (persons) |                        |      |                | Discontinued investigations (persons) | Acquittals <sup>4</sup> (persons) |
|------|----------------------|-------------------------|-----------------------|------------------------|------|----------------|---------------------------------------|-----------------------------------|
|      |                      |                         | Imprisonment          | Suspended imprisonment | Fine | Community work |                                       |                                   |
| 2013 | 49                   | 86                      | 2                     | 28                     | 11   | -              | 22                                    | 23                                |
| 2014 | 43                   | 62                      | 14                    | 27                     | 5    | -              | 6                                     | 10                                |
| 2015 | 43                   | 63                      | 9                     | 29                     | 11   | -              | 1                                     | 13                                |
| 2016 | 35                   | 51                      | 3                     | 15                     | 7    | -              | 11                                    | 15                                |
| 2017 | 20                   | 25                      | 3                     | 12                     | 1    | -              | 5                                     | 4                                 |
| 2018 | 24                   | 33                      | 9                     | 9                      | 2    | -              | 5                                     | 8                                 |
| 2019 | 30                   | 49                      | 3                     | 14                     | 4    | 1              | 16                                    | 11                                |
| 2020 | 25                   | 32                      | 2                     | 7                      | 7    | 1              | 6                                     | 9                                 |
| 2021 | 34                   | 53                      | 5                     | 24                     | 3    | 1              | 9                                     | 11                                |
| 2022 | 28                   | 37                      | 2                     | 14                     | 7    | -              | 3                                     | 5                                 |

As it follows from the above table, in 2022, the Moldovan courts delivered 28 judgments in respect of 37 persons. 5 of them have been acquitted and 23 convicted. Even if the guilt of ill-treatment was found, the applied sanctions are, as a rule, quite lenient, since only two persons were sanctioned with real imprisonment. In respect of 9 people the case was discontinued for procedural grounds (most often, expiration of the legal time limitation). In 2021, only 1 out of 10 persons were sentenced to imprisonment, while every second defendant was sentenced to suspended imprisonment. In the case of suspended imprisonment, the only effective consequence suffered by the person is the dismissal and the ban from working in the public service for several years.

**The acquittal rate in ill-treatment cases (21% in 2021 and 14% in 2022) is particularly high bearing in mind the average acquittal rate in Moldova is of 1.75-2%.** This indirectly confirms that the quality of the ill-treatment investigation is poor. On the other hand, the **high rate of cases discontinued by judges for procedural grounds** (17% of persons in 2021 and 8% in 2022) speaks of delayed investigations (in case of expiration of time limitation from 2012, the statutory time limitation is not applicable to ill-treatments, but it is applicable for ill-treatment occurred until 2012) or exoneration of responsibility of

<sup>4</sup> All the acquittal sentences were appealed to a higher-level court.

torturers by amnesty laws. **The Moldovan authorities should exclude such situations in future, as they generate impunity for torturers.**

[Based on LRCM research](#) of 71 irrevocable judgements of the SCJ issued between July 2013 and February 2022, **the average length of examination of torture and ill-treatment cases in courts, in three layers of jurisdiction, is 6 years. This means that court examination in such cases takes 4.5 times longer than in usual cases, that is 1.5 years. A delay in prosecuting or examining the case in the court could be explained only by the lack of will or fear of the suspects, who are people holding public positions and influential connections with prosecutors and judges.**

In *Valeriu and Nicolae Rosca v. Moldova* judgement, the ECtHR found that, in the context of Moldova, suspended imprisonment for torture may not be sufficient. [According to GPO activity report](#), in 2022 the incarceration was applied to 2,157 (25.5%) out of 8,452 convicted persons. Suspended imprisonment was applied to 1,641 persons (19.4%). In ill treatment cases, the rate of prison sentences in 2022 was 7%, while the rate of suspended imprisonment was 50%. **It follows that in 2022 suspended imprisonment in ill-treatment cases was ordered by judges 3 times more often than average and incarceration – was 3 times less frequent than average. The corresponding rate for 2021 is similar. These figures can be hardly reconciled with the stated 0 tolerance to torture approach of the Moldovan authorities.**

According to [our analysis mentioned above](#), since 2013, 71 people were sanctioned up to the SCJ with real or suspended imprisonment. Only 20 persons (28% of persons sentenced to imprisonment) ended up in prison. **In respect of 51 people (72%), the imprisonment sentence was suspended, the only consequence suffered being the dismissal from office and the prohibition for a certain period to return to the public service.** In fact, suspension has been ordered by judges whenever the law gave the judge discretion to do so (under the law, only imprisonment terms of up to five years can be suspended). **We also found that the judges always applied an imprisonment sentence very close to the minimum term prescribed by law. This data is also hard to reconcile with the commitment of Moldovan authorities to ensure the absolute prohibition of torture.**

The average duration of imprisonment ordered by Moldovan judges since 2013 was 5.5 years and the longest – was 8 years. **In all cases where judges imposed an imprisonment sentence of less than 5 years, they suspended its execution, often without any conclusive reasoning.** They did so because the law bans the suspension of imprisonment longer than 5 years. However, this suspension is a discretion and not an obligation of the judge. Such a high rate of suspended imprisonment is also questionable.

#### **Suspension from office of those under investigation for ill-treatment**

It is a general standard to have the persons suspected of ill-treatment immediately suspended from their duties and remain so throughout the investigation. The Moldovan authorities should comply with this standard. The Government in their action report noted that in the last 3 years, within the General Police Inspectorate, only six officers have been suspended from their duties regarding the ongoing criminal investigation related to the alleged commission of ill-treatment. Therefore, they confirmed that **suspects are rarely suspended from their office in ill-treatment cases. Also, it means that GPO does not have full statistics on the number of persons suspected of ill-treatment, and who have been suspended from office.** Based on LRCM [analysis of the SCJ judgments](#), only in one case out of 71, the person was suspended from office.

### **Involvement of victims of torture in the criminal proceedings**

By the [Constitutional Court Decision no. 31 of 29 November 2018](#) on the exception of unconstitutionality of certain provisions of the Criminal Code and of the Code of Criminal Procedure, in the part related to the access of the injured party and its representative to the materials of the criminal investigation, the Constitutional Court ruled, as a general rule, that the victims of torture and their representatives shall be awarded access to all the materials of the case file during the entire criminal investigation. As an exception, such access can be restricted by the prosecutor, based on a reasoned order, when that restriction is applied for a reasonable period, when it refers to certain procedural acts only and when the full access to the materials of the case-file risks to hinder the unfolding of that investigation. As a result of that decision, all the victims of ill-treatment must be offered full access to the materials of the investigation, being allowed to challenge, or request the conduct of certain investigative measures. **We have no data if this in practice takes place and are wondering if the Government can present this data. It can be a good indicator of the impact of that reform.** On the other hand, the Constitutional court suggested the Parliament to amend the legislation (para. 66) to clarify the procedure of access of the victim of torture to the investigation file. **The legislation was not changed, although the decision of the Constitutional Court was issued 5 years ago.**

**In conclusion**, we can state that, since 2020, no substantive progress has been made in practice in combating and investigating ill-treatment, as evidenced by the small number of cases investigated, efficiently and by the low rate of convictions and lenient sanctions. **This also reveals problems in terms of the quality of investigations carried out, as well as the lack of thorough training of prosecutors and judges involved in the investigation and examination of torture cases.**

### **CONFIDENTIALITY OF MEDICAL EXAMINATIONS AND ACCESS TO MEDICAL ASSISTANCE IN DETENTION FACILITIES**

Access to medical service for all detained persons continues to be limited and deficient, despite improved legislation. All detained persons should undergo a medical examination immediately upon entry to and exit from the place of detention, as well as upon their request during the stay there. However, there is insufficient medical care to support potential or alleged victims under arrest in the aftermath of trauma, both physical and psychological.

Regarding the right of access to medical assistance, the detained people are examined by an institutional medical worker (feldsher) or within civilian hospital before being placed into detention facility. **However, since our last submission, there are still doubts about the completeness of medical examinations, as the properly documentations of injuries.** As the Ombudsman [in its 2022 report confirmed](#) (pag.70) that most of the time, the medical workers do not regularly visit the convicts, therefore the documentation of the injuries takes place only at the request of the convict persona or if the medical worker has been notified by the administrative staff of the penitentiary. **This means that not all injuries, alleged acts of torture, or ill-treatment are recorded and documented.** At the same time, Ombudsman noted that it is regrettable that **the complaints of the convicts/detainees regarding psychological torture are not registered and not investigated as well.**

The CPT [found that the independence of medical workers](#) is directly affected, due to any relationship of subordination with the management factors of the detention isolators. The CPT reiterated that this dual loyalty is likely to give rise to an obvious conflict of interest and that it is preferable for health-care staff working in all police facilities to be independent of the police. In short term, **CPT recommends transferring the medical workers from the police staff to the Ministry of Health** and to develop public-private partnerships to complete the units of medical staff within detention isolators via concluded

contracts with the medical institutions at the territorial level. The transfer does not imply considerable public expenditures or other constraints that are difficult to overcome. **This transfer was publicly committed by the Moldovan Government since 2007, by to no avail.**

## EDUCATION AND TRAINING

The Moldovan judges and prosecutors traditionally benefitted of numerous trainings in the field of ECHR. We admit that their level of proficiency in the field of combatting torture is generally adequate. In this context, it is hard for us to understand why this level of knowledge does not have high impact on the quality of ill-treatment investigations and adequate sentencing.

## RECOMMENDATIONS

We call the Committee of Ministers to recommend the Moldovan authorities the following:

- a) transfer of the personnel of the temporary detentions' facilities from the Ministry of Interior to the Ministry of Justice.
- b) medical staff of the police detention facilities shall have full independence, through their transfer under the subordination of the Ministry of Health.
- c) prosecutors shall improve the quality of investigations into the allegations of ill-treatment and treat these cases with priority.
- d) ensure that persons suspected of ill-treatment do not have access to the victim or, in severe cases, are immediately suspended from their duties and remain so throughout the investigation.
- e) prosecutors shall be trained how to ensure adequate involvement of the victim of ill-treatment in the investigation.
- f) judges shall review their sentencing practice on ill-treatment cases and apply adequate sanctions to effectively prevent ill-treatment. They should also uniformize the case law in ill-treatment cases.
- g) generate accurate and full statistical data about the ill-treatment cases, including the length of investigation and judicial proceedings, suspension from office of suspects, and sanctions applied up to the highest level of jurisdiction.

In the light of the above, we urge the Committee of Ministers to keep the *Levința* group of cases under enhanced supervision.